

Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount shall be subject to the Secretary's prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

(g) *Dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract.* [Reserved]

§ 298.36 Annual Guarantee Fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology, the Secretary shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than $\frac{1}{4}$ of 1 percent and not more than $\frac{1}{2}$ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology, the Guarantee Fee shall be imposed at an annual rate of not less than $\frac{1}{2}$ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt of the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat

charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the credit source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel or Advanced or Modern Shipbuilding Technology delivery.* For annual periods beginning prior to the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be $\frac{1}{2}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be $\frac{3}{8}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual Guarantee Fee rate shall be $\frac{1}{4}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel or Advanced or Modern Shipbuilding Technology delivery.* For annual periods beginning on or after the Vessel or Advanced or Modern Shipbuilding Technology delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt but less than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be $\frac{3}{4}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be $\frac{5}{8}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be $\frac{1}{2}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* The Guarantee Fee covering the full period of the stated maturity of the Obligations commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The project's entire Guarantee Fee payment shall be made by the Obligor to the Secretary in an amount equal to the sum of the present value of the separate products obtained by applying the Guarantee Fee rate to the projected amount of the Obligations Outstanding for each year of the stated maturity of the Obligations. In calculating the present value used in determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board quarterly rates. Under no circumstances

will the Secretary refund the Guarantee Fee to the Obligor. A Guarantee Fee paid pursuant to this section may be included in Actual Cost and is eligible to be financed.

(f) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel or Advanced or Modern Shipbuilding Technology, as well as records of a Related Party and domestic agents connected with such Persons, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel or Advanced or Modern Shipbuilding Technology with respect to which Guarantees or an insurance contract is in force. When a Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant